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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,450	06/24/2003	Ernest B. Pryor JR.	10499-649US (795210104-03)	4405
570	7590	08/10/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,450

Applicant(s)

PRYOR, ERNEST B.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: DISAPPROVED drawings of 5-19-05.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on 5-19-2005. These drawings are NOT APPROVED. The drawings introduce new matter to the showing of the relative position of the handle opening through the handle itself, in a longitudinal manner along the handle and upon both element of figures the embodiments of fig 3 and fig 6. Basis is only for the handle having an opening in communication with the cavity, but falls short of a enablement of the opening through the handle itself.

### ***Specification***

2. The amendment filed 5-19-2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: a description that an opening (shown in phantom) as seen in figures 3,4 and 6) being disposed through the handle, and being provided also upon the ribbed handle 154. Scope of description only describes as recited in the claims 4 and 12 of a handle having an opening with is in fluid communication with the cavity, but is vague in where and the manner in which the opening cooperates with upon or through the handle.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed specification fails to adequately convey the relative orientation of an opening extending in a direction parallel to the longitudinal axis of the plunger. One can not determine originally that there is an exact parallel arrangement with the longitudinal axis from a reading of the originally filed specification as a whole.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language

6. Claims 1, 5, 9, 13 are rejected under 35 U.S.C. 102(e), or alternately 102(a) as being anticipated by Daniels Jr. US 2002/0080678.

The Daniels reference teaches a spherical handle 70, a elongate plunger 62, a trough cavity 120 extending from the 1<sup>st</sup> end to the 2<sup>nd</sup> end.

With regards to the phrase "cavity being open at least at the second end", the phrase is broad in scope in the direction of the opening. It is noted that the trough 120 is open radially along the entire length of the trough 120 from the 1<sup>st</sup> end to the 2<sup>nd</sup> end, and that the face of the trough cavity forms an opening with a face and sides extending in a direction parallel to a longitudinal axis of the plunger.

It is also noted that the 1<sup>st</sup> and 2<sup>nd</sup> ends are deemed as respectively, a 1<sup>st</sup> end at the end of the cavity located just below the handle and a 2<sup>nd</sup> end being the distal lower end of the tool. This interpretation is consistent with applicant's description of the 1<sup>st</sup> and 2<sup>nd</sup> ends as discussed in the specification, page, 4, lines 29-30, namely 1<sup>st</sup> end 44 and 2<sup>nd</sup> end 46. Note that the applicant's invention description of the 1<sup>st</sup> end 44 is not located at the upper end, or upon the handle.

7. Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Strech 5636390.

With regards to the use of manipulating food stuff in a blender, such language has been considered and deemed as directed to the intended use of the structure and provides little patentable distinction to the structure scope of the recited elements of the claim.

The Strech reference discloses an elongate plunger 10, for stuffing material having a 1<sup>st</sup> end of the cavity at 17 and 2<sup>nd</sup> end of the cavity (at 22 bottom of drawings), a cavity between the ends 17, 22, and a handle 30A, 20, 22B, and including a scoop end at 22, 22A, and an edge at 22a, 22 which is structurally capable of scraping if so desired in use. The handle 10, 30 includes a disc collar such as 15B (figs 2, 4) or a generally frustoconical collar as seen in 15C (figs 1, 3) and an opening in the handle as defined by the upper peripherally confined portions above 22b and the collar 15 above the scoop portion 22 with is connected to the cavity in which food may move from the scoop end of the cavity into the opening of the handle at the 1<sup>st</sup> end. . It is noted that the trough has an open face along the entire length of the trough cavity from the 1<sup>st</sup> end to the 2<sup>nd</sup> end, and that the face of the trough cavity forms an opening with a face and sides extending in a direction parallel to a longitudinal axis of the plunger.

Also, the Stretch reference teaches the use of device in combination with a disposal which inherently the disposal casing has a housing base containing a motor, a blender jar being the sink and inner disposal container about under the sink to hold foodstuffs from the sink and a comminuting blade.

8. Claims 1-3, 9-11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Berler 4250771.

The Berler reference as seen in figures 1-6 discloses an elongate plunger 18, for stuffing material having a 1<sup>st</sup> end just below the handle and 2<sup>nd</sup> end near the end tip, a cavity trough formed between the sides 32, 34 to form a scoop, and a handle 26, and

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including a scoop end at the end of 20, 22, and an edge scraper at the edges of 22 if so desired in use. The handle 26 includes a plate collar 24. The Berler reference also shows a blender base with a blender processor jar of the type having a blade from the bottom of the jar, and a lid, and whereby the term proximate is a relative term, the blade is deemed proximate the bottom of the container jar. It is noted that the trough is has an open face along the entire length of the trough cavity from the 1<sup>st</sup> end to the 2<sup>nd</sup> end, and that the face of the trough cavity forms an opening with a face and sides extending in a direction parallel to a longitudinal axis of the plunger.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771.

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the collar being a disc in the embodiment of figures 1-6. However the Berler reference discloses in figure 8 a collar shaped in a cylindrical shape 56. In view of the teaching of Berler that the collar may be of differing shapes, it is deemed that it would have been obvious to one of ordinary skill in the art to



made the collar into a disc shape or any other shape which would provide a collar base such as a frustoconical shape since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

11. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771 in view of Daniels, Jr., US 2002/0080678 ('678).

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the handle being generally semi-spherical in shape. The reference to Daniels, Jr. ('678) discloses that a beverage plunger stick 62 may have a spherical like end 70.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle shape of a spherical like end or any other shape so that the handle maybe gripped in a more ergonomically manner since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

12. Claim 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berler 4250771 in view of Strech 5636390.

The Berler reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the handle having an opening in fluid communication with the cavity, and having a plunger collar which is frusto-conical in

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shape, The reference to Strech discloses that a plunger may have a collar which is frustoconical like and having a handle with has a cavity connected to the trough, as disused above to the Strech reference as see in figures 1 and 3..

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle and collar shape to a frustoconical shape including a handle opening connected to the trough cavity so that the handle maybe gripped in a more ergonomically manner since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

### ***Response to Arguments***

13. Applicant's arguments filed 5-19-2005 have been fully considered but they are not persuasive.

14. Applicant argues that the Daniels, Jr reference dose not show an opening extending in a direction parallel to the longitudinal axis of the plunger forming a continuous flow channel from the 1<sup>st</sup> end to the 2<sup>nd</sup> end. In response this is addressed in the discussion of Stretch in the rejection made above.

15. Applicant argues that the references to Stretch does not show the combination of the provision of blender with a base, jar and blade set. In response this is addressed in the discussion of Stretch in the rejection made above.

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16. Applicant argues that the Berler reference does not have a blender blade proximate the bottom end. In response this is addressed in the discussion of Stretch in the rejection made above.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

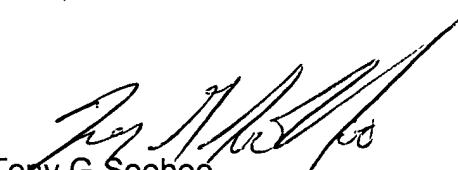
18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose cavities with openings through the handle end tip: Numbers 2559168, Gomez Acevedo 5048728, Parker 2802605, Aykanian 3461554, Rice 2294096.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri (As of 9/05 Fax will be 571-273-8300).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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-- Replacement Sheet --

Attachment to office  
Action

Page # 20050808



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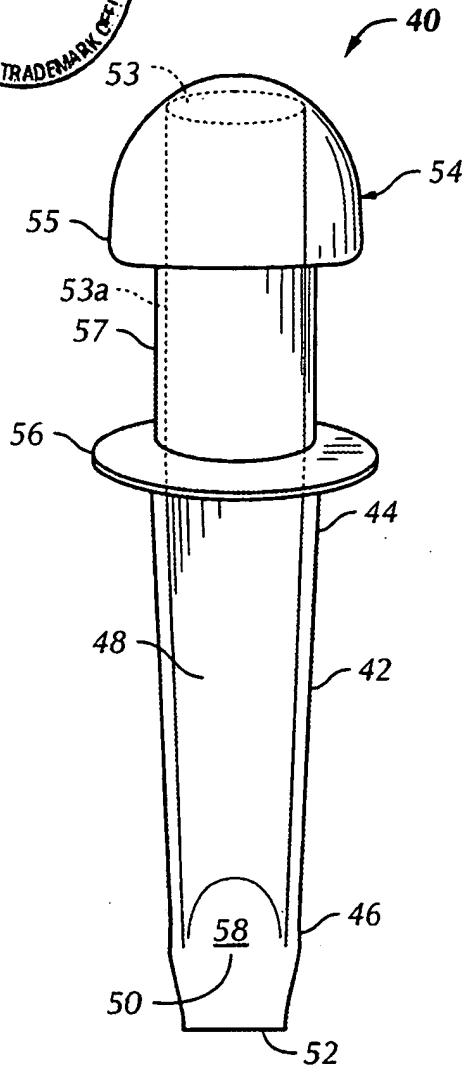


FIG. 3

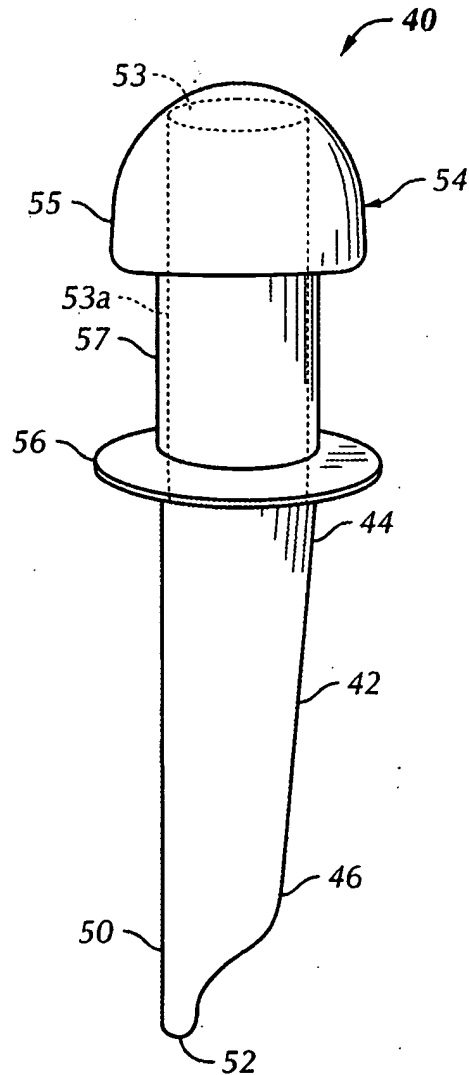


FIG. 4

Not  
Approved  
TGS 8-8-05  
TONY G. SOOHOO  
PRIMARY EXAMINER

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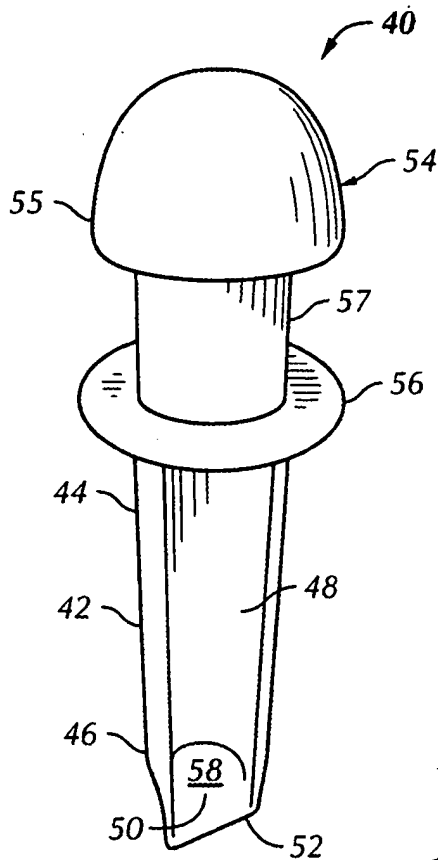


FIG. 5

NOT  
APPROVED  
TO 8-8-05

TONY G. SOOHOO  
PRIMARY EXAMINER

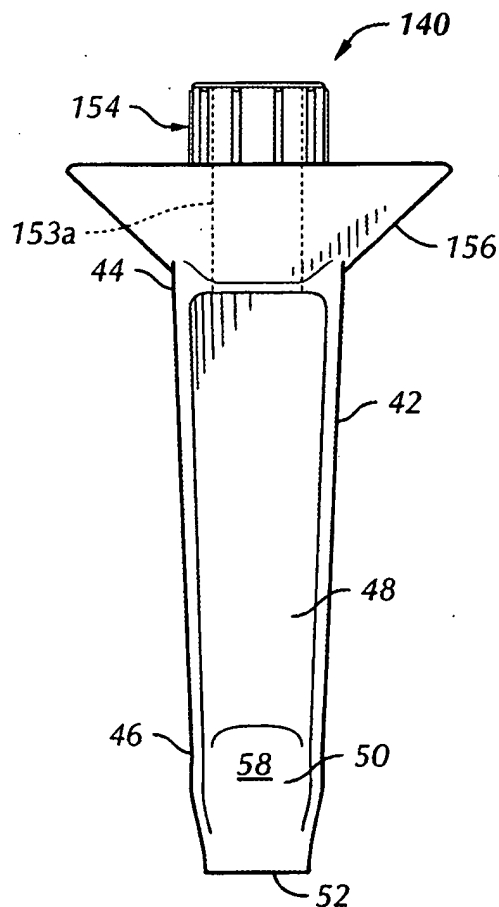


FIG. 6